What is more, the government's arguments are mistaken. Although it is surely correct that liability against the United States requires both "a waiver of sovereign immunity *and* a source of substantive law that establishes a cause of action," Opp. 9, contrary to what the government asserts, both are present here. Section 106(b) and (c) waive the government's immunity with regard to claims in bankruptcy, and state law is the source of substantive law. The government's repeated suggestion that only the FTCA, but not state law, can be the source of substantive tort law where the United States is concerned, *e.g.*, *id.* at 11, 12, has no basis. It is quite irrelevant that "[s]tate law ... *generally* provides no cause of action against the United States," *id.* at 10 (emphasis added), for that principle falls by the wayside when sovereign immunity has been waived—as it has been here by § 106. Nor does the FTCA preempt state law, *id.*, precisely because the FTCA's limited waiver of sovereign immunity is inapplicable and irrelevant when, as here, the plaintiff's claim rests upon a separate waiver of sovereign immunity.[7]

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[7] The government's suggestion that Petitioners' claim is barred by res judicata, Opp. 17, is likewise inapposite. The government itself twice concedes that the "court of appeals did not reach the issue." *Id.* at 18; *see also id.* at 7. This issue is not encompassed in the Question Presented (either Petitioners' or the government's); it in no way affects the underlying conflicts that warrant this Court's attention; and the argument is mistaken in any event, as a dismissal for lack of jurisdiction does not have res judicata effect, even assuming the other elements of res judicata have been met. *Restatement (Second) of Judgments* § 20(1)(a) (1982); Fed. R. Civ. P. 41(b). Nor is the government's argument concerning the statute of limitations any more forceful. At a minimum, Franklin Savings' counterclaims are timely as to the government's claims filed in 1995, 1998, and 1999, even leaving aside questions of tolling.

The related insinuation that Petitioners have somehow taken up more than their fair share of judicial resources, Opp. 18, barely merits response. Suffice it to say that the federal government destroyed hundreds of millions of dollars of value when it tortiously seized and liquidated Franklin Savings—all as a result of the government's inability to understand Franklin Savings' business model—and Petitioners are unembarrassed by their legitimate efforts to regain what was wrongfully taken from them.

* * * *

The decision below badly misunderstands the nature and operation of the Federal Tort Claims Act. The decision conflicts with four circuits in holding that the limitations of the FTCA apply to claims brought under § 106, and further conflicts with decisions of this Court and four circuits in mistakenly concluding that the FTCA provides a cause of action. These important questions require clarity and uniformity, and merit this Court's review in this case.

CONCLUSION

For the foregoing reasons and those set forth in the Petition, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

R. PETE SMITH
JONATHAN MARGOLIES
McDOWELL, RICE, SMITH & BUCHANAN
605 West 47th Street,
Suite 350
Kansas City, MO 64112
(816) 753-5400

CARTER G. PHILLIPS*
ERIC A. SHUMSKY
SIDLEY AUSTIN BROWN & WOOD LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000

Counsel for Petitioners

* Counsel of Record

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